

Texas Purpose Trusts: Two Years Later

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I. How We Got Here

Two years ago, Texas House Bill 2333 was signed into law, giving Texans the ability to create “purpose trusts,” i.e., trusts established for a stated, noncharitable purpose rather than for one or more ascertainable beneficiaries (Purpose Trusts).¹ Those who had been monitoring the development and use of Purpose Trusts around the country believed this new statute would give practitioners another tool to deal with the long-standing desire of clients that businesses or other assets not be sold or that business profits should be used to benefit certain causes. Before getting to the planning aspects of the “new” statute, it makes sense to look at how we got here.

A. Family and Business Planning and Common Law Trusts

A common refrain of many estate planning clients is that the business they spent decades building in their image “should never be sold” and/or should always be run the way the founder intended. This intent might be purely economic or perhaps benevolent. Putting aside whether it makes good policy sense to enable words like “never,” “forever,” or “always,” the preservation of a family business over generations is exceedingly difficult in even the most ideal situations. The presence of threats like litigation, divorce, divergent family interests, and the federal transfer tax system looms large when planning for the future.

Although common law, noncharitable irrevocable trusts (Traditional Trusts) are an excellent (and likely the best—admittedly, coming from a planner) tool for long-term ownership of assets, Traditional Trusts historically have always had one frustrating constant: *the beneficiary*. Unlike truly charitable trusts (which are typically not ideal for business ownership due to draconian rules against excess business holdings and self-dealing), Traditional Trusts must have a beneficiary to enforce the trust,² which can make business owners and their respective counsel nervous.

The first round of beneficiaries are typically the children of the business founder and often share the founder’s goals and desires for the company, its employees, and, sometimes, the causes the business supports. These beneficiaries may be willing to forego maximizing personal gain from the company. Future generations, however, may not have the same mindset and may start to put pressure on the trustee to increase profits or sell the company to enable substantial distributions. Strongly worded trust agreements directing the trustee to hold non-diversified assets or businesses and/or distribute funds for certain purposes, all with priority over individual beneficiaries, have been used for years to combat this risk. The success of this type of planning is dependent on cooperative, risk-averse trustees and content beneficiaries, which often does not provide enough comfort for some business owners.

This problem is not unique to trust-owned for-profit businesses. Family governance structures have struggled with the issue of the “rogue” beneficiary as well. Private trust companies (PTCs), family offices, and other family property management structures are often placed into long-term, federal estate tax-exempt Traditional Trusts for the benefit of the entire family (an Owner Trust). Enter the disenfranchised

¹ [TEX. PROP. CODE §§ 112.121-.123](#).

² [RESTATEMENT \(THIRD\) OF TRUSTS § 44 \(A.L.I. 2003\)](#) (subscription to Lexis required to access); *see also* [UNIF. TR. CODE § 402\(a\)\(3\) \(UNIF. L. COMM’N 2000\)](#) (listing a definite beneficiary as a requirement for trust creation); [TEX. PROP. CODE § 111.004\(4\)](#) (“‘Beneficiary’ means a person for whose benefit property is held in trust, regardless of the nature of the interest.”).

beneficiary that has not been allowed (likely for good reason) to participate in decision-making and seeks to cause trouble for the whole structure. This beneficiary has substantial rights to enforce the Owner Trust and has the opportunity to make life difficult for the trustee and interfere with the overall structure.

B. Beginnings of Purpose Trusts in the U.S. and Abroad

The tension between Traditional Trust concepts and the desire to manage businesses and wealth for a purpose other than the economic gain of individual beneficiaries is not a new one. Structures to solve these issues have evolved in the U.S. and abroad for years.

1. Non-U.S. Structures

In Europe, Purpose Trusts, foundations, and similar structures have long been used to maintain a company's purpose. For example, the Carl Zeiss Foundation (a German single foundation structure, or Stiftung) has owned and operated the well-known optics company since 1891 in line with the fundamental goals of one of the original owners, Ernst Abbe, including (1) "preservation of the companies and their economic capacity," (2) "promotion and social security of employees, including their social environment," and (3) "funding of science research from the profits of the companies."³ Structures like this are also found in other countries such as the Netherlands, where the "Stichting" is popular. Stichtings have been around for centuries and are defined by Section 2:285 of the Dutch Civil Code to mean "[a] legal person formed by means of a juridical act, that has no members, and that intends to realise an objective (purpose), mentioned in its articles of incorporation, by using capital (property) which has been brought in for this purpose."⁴

2. Purpose Trusts Under Common Law, the Uniform Trust Code, and Certain Other State Statutes

Prior to the end of the 20th century, it was not uncommon for settlors in the United States to create trusts to make distributions to certain individuals for benevolent, but not truly charitable, purposes. Examples of these trusts would be those to maintain a gravesite, pay for religious observances, or care for an animal, where the settlor is effectively relying on the trustee's willingness to follow through with the stated ends.⁵ With no beneficiary to seek court involvement, however, the trustee's actions or inactions would not be subject to enforcement, and in some cases courts would find the trust invalid even if the trustee was willing to comply.⁶

To at least partially address this issue, two Uniform Trust Code (UTC) sections were introduced in 2000. Section 408 of the UTC validates a trust for the care of an animal, and section 409 of the UTC validates other noncharitable trusts.⁷ While the animal trust is self-explanatory, UTC section 409 began to

³ [Statute](#), CARL ZEISS STIFTUNG (last visited Sept. 29, 2025).

⁴ See Nico Francken, [The Dutch Foundation](#), STEP J., July 2013, at 1.

⁵ See Susan N. Gary, [The Oregon Stewardship Trust: A New Type of Purpose Trust that Enables Steward-Ownership of a Business](#), 88 U. Cin. L. Rev. 707, 731 (2020); see also Susan N. Gary, [The Need for a New Type of Purpose Trust, the Stewardship Trust](#), 45 ACTEC L.J. 37, 39 (2019) ("Given the relatively limited purposes of honorary trusts—care of animals, care of graves, a power to distribute property for benevolent purposes—restrictions to comply with the rule against perpetuities and the prohibition against capricious purposes make sense.").

⁶ [The Oregon Stewardship Trust: A New Type of Purpose Trust that Enables Steward-Ownership of a Business](#), *supra* note 5, at 714. (citing the [RESTATEMENT \(SECOND\) OF TRUSTS § 123 cmt. d \(A.L.I. 1959\)](#) (subscription to Lexis required to access)).

⁷ [UNIF. TR. CODE §§ 408-409](#).

offer something intriguing for those looking for a true Purpose Trust. Although the drafters clearly had the historical use of cemetery or other similar trusts in mind, section 409 is not limited to any particular type of purpose.⁸ Further, the UTC introduced the position of “enforcer,” a person named by the grantor to enforce the terms of the trust in lieu of an identifiable beneficiary.⁹

Several states, such as Nevada, Wyoming, Florida, and Delaware, have adopted a modified version of the UTC in an attempt to develop modern Purpose Trusts. Perhaps the most commonly cited jurisdiction due to the Patagonia transaction (discussed later), Oregon previously adopted a Purpose Trust statute consistent with UTC section 409 (including a 90-year term limit on any such trust). The state legislature took a step further in 2019 with the adoption of a second statute providing for the creation of stewardship trusts to own for-profit businesses in perpetuity (Stewardship Trusts).¹⁰ Unlike other statutes, however, some could argue that the Oregon statute is too rigid and does not allow for customized structures, given that it requires a specific stewardship committee of at least three members with certain required powers held in a fiduciary capacity.¹¹ Nonetheless, the Oregon statute certainly represented a major step forward with respect to the clear authority for, and acceptance of, Purpose Trusts in the United States.

C. The Texas Purpose Trust

In 2005, the Texas Legislature enacted section 112.037 of the Texas Property Code, providing for trusts for the care of an animal, drawing significantly from section 408 of the UTC.¹² Until 2023, all other trusts in Texas (other than wholly charitable trusts) needed to be formed for the benefit of another person in order to be enforceable.¹³ In 2023, House Bill 2333 (HB 2333 or the Bill) was introduced in the Texas Legislature to allow for the creation of a Purpose Trust in Texas. As introduced, the Bill took a bifurcated approach by creating two similar, but different, Purpose Trusts. First, the Bill broadly authorized trusts for a noncharitable purpose, without an ascertainable beneficiary, and enforced by the newly created “enforcer” position.¹⁴ The second portion of the Bill appeared to draw heavily from the Oregon Stewardship Trust by authorizing the creation of “commercial legacy trusts” for the specific purpose of holding a controlling interest in a for-profit business entity.

The commercial legacy trust portion of HB 2333 was met with substantial opposition, largely due to

⁸ *Id.* §§ 408 cmt., 409 cmt.

⁹ *Id.* §§ 408(b), 409(2).

¹⁰ [ORE. REV. STAT § 130.190](#), .193; see also [The Oregon Stewardship Trust: A New Type of Purpose Trust that Enables Steward-Ownership of a Business](#), *supra* note 5, at 725 (discussing Oregon’s adoption of a stewardship trust provision).

¹¹ [ORE. REV. STAT. § 130.193](#).

¹² [TEX. PROP. CODE § 112.037](#).

¹³ [Id. § 111.004\(4\)](#); see also [City of Wichita Falls v. Kemp Pub. Libr. Bd. Trs.](#), 593 S.W.2d 834 (Tex. App.—Fort Worth 1980, writ ref’d n.r.e.) (“A declaration of trust must be reasonably certain in its material terms. This includes identification of the property covered by the trust, the beneficiaries or persons in whose behalf the trust is created and the manner in which the trust is to be performed. If any of these elements are vague, general or equivocal, the trust will fail for want of certainty.”).

¹⁴ [Tex. H.B. 2333, 83d Leg., R.S. \(2023\)](#).

the overly restrictive structure, and was ultimately pulled from the Bill,¹⁵ with the remainder becoming law in 2023. For ease of reference, the relevant provisions of the Texas Property Code as brought about by the Texas Purpose Trust legislation are as follows:

Section 111.004(4), Property Code, is amended to read as follows:

(4) “Express trust” means a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property:

(A) for the benefit of another person; or

(B) for a particular purpose, in the case of a trust subject to Subchapter F.

Chapter 112, Property Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

Sec. 112.121. VALIDITY OF TRUST; APPLICABILITY. (a) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary. A noncharitable purpose may include seeking economic or noneconomic benefits.

(b) This subchapter does not apply to a trust created under section 112.037.

Sec. 112.122. ENFORCEMENT OF TRUST. (a) A trust created under this subchapter must be enforced by one or more persons appointed in the terms of the trust to serve as a trust enforcer.

(b) A trust enforcer shall enforce the purpose and terms of the trust. The trust enforcer is not a beneficiary of the trust, but has the rights of a beneficiary provided under this title and the common law of this state, or as otherwise provided by the terms of the trust.

(c) A trust enforcer shall exercise any authority granted under the terms of the trust or the provisions of this section as a fiduciary owing a duty to the trust and is entitled to reasonable compensation for serving as trust enforcer.

(d) A trust enforcer may consent to, waive, object to, or petition an appropriate court concerning any matter regarding the purpose or administration of the trust.

(e) Except as otherwise provided by the terms of the trust, if more than one person is acting as a trust enforcer, any action in that capacity must be decided by the majority vote of the persons acting as trust enforcers. If there are an even number of trust enforcers and a majority vote cannot be established, the decision of the trustee controls.

(f) The terms of the trust may provide for the succession of a trust enforcer or a process of appointing any successor trust enforcer.

(g) If no person is serving as a trust enforcer for a trust created under this subchapter, a court properly exercising jurisdiction shall appoint one or more persons to serve as the trust enforcer.

¹⁵ See Letter from Tex. Real Est. & Prob. Inst. to Tex. Rep. Steve Allison (Apr. 1, 2023) (on file with author).

Sec. 112.123. APPLICATION OR DISTRIBUTION OF TRUST PROPERTY. (a) Property of a trust created under this subchapter may be applied only to the intended purpose of the trust, except to the extent that a court finds that the value of the trust property exceeds the amount required for the intended purpose of the trust.

(b) Except as provided by the terms of the trust, property found by a court not to be required for the trust's intended purpose shall be distributed:

(1) as provided by the terms of the trust; or

(2) if the trust does not provide for the distribution of such property, to the settlor if then living or to the settlor's successors in interest.

II. Planning with a Purpose Trust: NOW WHAT?

A. Potential Planning Opportunities

Although not intended to be an exhaustive list of opportunities or a fix-all for every situation, below are a few examples of how Texas Purpose Trusts can be used to solve a variety of ownership and governance problems.

1. Situation 1 – The Patagonia Model

Client builds a company based on socially responsible fundamentals and wants the company to continue operating in support of its employees and its fundamental mission, rather than focusing on maximizing distributions to shareholders.

Although not specifically a Texas-based example, the Patagonia transaction has drawn much attention and has served as the basis for planning for a few Texas business owners. The founder of Patagonia, Yvon Chouinard, had a greater interest in ensuring that the company survived to combat climate change than he did in building and maintaining wealth.¹⁶ In August 2022, the Chouinard family transferred all the voting stock of Patagonia to an Oregon Stewardship Trust, known as the Patagonia Purpose Trust.¹⁷ The Chouinards donated the rest of the company, being the non-voting shares and most of the economic value, to a 501(c)(4) entity known as the Holdfast Collective.¹⁸ 501(c)(4)s are typically organizations not organized for profit but operated exclusively for the promotion of social welfare and, unlike 501(c)(3)s, may engage in lobbying efforts consistent with their purposes, a trait that undoubtedly appealed to the Chouinards. Gifts may be made to 501(c)(4)s without incurring gift tax under [IRC § 2501\(a\)\(6\)](#), but there is no equivalent federal estate tax deduction under [IRC § 2055\(a\)](#). See the discussion later in this Article regarding planning with non-voting interests.

2. Situation 2 – The Long-Term Hold Model

Client owns a company that she wants held long-term and overseen by trusted insiders rather than sold at the whims of her family.

Although practitioners point to benevolent or socially responsible causes when championing Purpose Trusts, many clients will be interested in using them to ensure their business is privately owned long-term and not subject to the squeaky-wheel family member. In this circumstance, planning counsel could

¹⁶ David Gelles, [Billionaire No More: Patagonia Founder Gives Away the Company](#), N.Y. TIMES (Sept. 22, 2022) (subscription to The New York Times required to access).

¹⁷ *Id.*

¹⁸ *Id.*

suggest that Client fund a Purpose Trust with voting interests in her company, but with trusted business insiders as enforcers instead of charitable representatives. The trust agreement would provide that the purpose of the trust is the long-term success of the company as a privately-owned business, and the company may not be sold, merged, or otherwise disposed of without the approval of these enforcers. The non-voting interests in the company could be transferred to or for the benefit of Client's family through traditional estate planning methods, where they would benefit from the profits of the company. As beneficial owners of non-voting interests, they may still seek to exercise their limited rights to influence the company, but at a minimum, they would not be able to pressure the trustees of the Purpose Trust directly to sell the company.

3. Situation 3 – The PTC Model

Client establishes a PTC but is concerned about the long-term ownership and control of the PTC.

Compared to the companies in situations 1 and 2, a PTC has relatively low economic value. However, its ownership and control are no less important. Client could consider funding a Purpose Trust with the ownership interests in the PTC, expressly state that the purpose is the long-term ownership and control of the PTC, and integrate the desired family governance scheme into the trustee/enforcer structure. The beneficiary-less nature of the Purpose Trust would (1) avoid any expectations of profitability of the PTC (which would otherwise not likely turn a profit from the family trusts) and (2) provide greater protection to the trustees and the overall governance structure from a disgruntled family member. The ability to leverage this solution, however, depends on the state in which the PTC is organized. Statutes in some states (such as Nevada) would clearly allow ownership of a PTC by a Purpose Trust, while other states (such as Texas) require a PTC to be owned, legally or beneficially, by a family member.¹⁹ Therefore, to facilitate acceptance of this new structure with banking regulators, a Purpose Trust owning a Texas PTC should likely require the trustee to always be a family member.

B. Important Planning Considerations

When faced with situations similar to those mentioned above or other potential use-cases for Purpose Trusts, practitioners should consider a number of factors that impact the formation and funding of a Purpose Trust. Regardless of the commentary below, however, keep in mind that the limited historical use of Purpose Trusts creates significant uncertainty as to their long-term interpretation by courts and regulatory bodies. Enforcement of purposes and fiduciary duties, as well as treatment of such trusts by the Internal Revenue Service (IRS) for tax purposes (see below), is anything but settled.

1. Income, Gift, and Estate Tax Considerations

Perhaps the elephant in the room is whether, despite having “trust” in the name, Purpose Trusts are trusts for tax law purposes, and by extension, whether a practitioner can rely on traditional tax law concepts when funding and transferring assets to a Purpose Trust. For example, a grantor of a Purpose Trust may want to include certain provisions to cause the trust to be a grantor trust for federal income tax purposes, enabling the grantor to make tax-free sales of assets to the trust. Alternatively, there may be a desire to gift S corporation stock to a non-grantor Purpose Trust and make an Electing Small Business Trust election, an election that necessitates the Purpose Trust being deemed a “trust” under the Internal Revenue Code.

The treasury regulations provide that

¹⁹ Compare [NEV. REV. STAT. § 669A.080](#) (allowing ownership of a PTC by a Purpose Trust), with [Tex. Fin. Code § 182.011](#) (requiring a PTC to be owned, legally or beneficially, by a family member).

the term “trust” as used in the Internal Revenue Code refers to an arrangement created either by a will or by an inter vivos declaration whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries under the ordinary rules applied in chancery or probate courts.²⁰ [The Regulations go on to add that] [g]enerally speaking, an arrangement will be treated as a trust under the Internal Revenue Code if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.²¹

It is clear that the plain reading of these regulations implies that a Purpose Trust needs a beneficiary to be treated as a trust, despite the IRS’s previous findings that beneficiary-less vehicles, such as pet trusts and cemetery trusts, are trusts for tax purposes.²² Given the increased interest in Purpose Trusts and this uncertainty, the American Institute of Certified Public Accountants has reached out to the IRS about this issue and suggested that the treasury regulations be amended to classify Purpose Trusts as ordinary trusts for federal income tax purposes, among other related guidance.²³ If beneficiaries are ultimately mandatory for trust classification, a Purpose Trust without them could be a business entity that elects to be taxed as a corporation.²⁴ If the grantor of the Purpose Trust is only looking to make gifts of property to the “trust,” this is perhaps a satisfactory result, but leaves more advanced trust planning unavailable.

For practitioners who do not want to wait for the IRS to provide additional guidance, a Purpose Trust may be drafted to allow the trustee to make distributions to unnamed/unascertained beneficiaries that meet the noncharitable purpose of the trust. For example, the trustee could determine that distributions to a 501(c)(4) or another entity or organization, which also meets the trust’s purpose, are appropriate. Consider the following distribution language to use in such a circumstance:

If at any time the Trust holds cash that is not needed to meet current or future trust expenses, then the Trustee may, in the Trustee’s sole discretion, distribute such excess cash to one or more individuals or entities (other than any Trustee, any Trustee’s creditors, any Trustee’s estate, or the creditors of any Trustee’s estate) as the Trustee of the Trust shall select; provided, that the Grantor desires that any such distribution to a beneficiary be made in furtherance of or consistent with the purpose set forth herein (as determined by the Trustee in the Trustee’s sole discretion). Notwithstanding anything herein or Section 112.123 of the Texas Trust Code to the contrary, no distribution shall ever be made to the Grantor or the Grantor’s successors in interest.

Recall from the statute that the Texas Purpose Trust is not enforced by these beneficiaries, as would

²⁰ [Treas. Reg. § 301.7701-4\(a\)](#).

²¹ *Id.*

²² [Rev. Rul. 76-486, 1976-2 C.B. 192](#); [Rev. Rul. 58-190, 1958-1 C.B. 15](#). Consider also that the Texas Trust Code characterizes a Purpose Trust as an “Express trust,” meaning that the probate courts of Texas will be called upon to ensure that the purposes of Texas Purpose Trusts are being carried out, i.e., a fundamental factor to the treasury regulations treatment of “trusts.”

²³ See [Letter from Blake Vickers, Chair, AICPA Tax Exec. Comm., to Laura C. Fields, Branch Chief, Branch 1, Off. Assoc. Chief Couns., Internal Revenue Serv., and Robert D. Alinsky, Branch Chief, Branch 3, Off. Assoc. Chief Couns., Internal Revenue Serv. \(Apr. 26, 2024\)](#).

²⁴ [Treas. Reg. § 301.7701-3\(a\)](#).

be the case with a Traditional Trust, but rather by the trust enforcer.²⁵ So drafted, a Purpose Trust arguably meets the current treasury regulations' treatment of an ordinary trust and, therefore, allows a grantor to use traditional estate planning techniques for transferring assets to the Purpose Trust.

As mentioned above, despite the absence of identifiable beneficiaries, contributions to a Purpose Trust should be considered taxable gifts to the same extent as contributions to a Traditional Trust. A Purpose Trust can be structured as a completed gift or an incomplete gift (such as a revocable trust). Further, practitioners should take care to draft the Purpose Trust so that the transferor retains no powers that would otherwise trigger estate tax inclusion with respect to a Traditional Trust, assuming such avoidance is the desired result. Keep in mind that the Texas statute allows a court to order distributions of property in excess of the trust's intended purpose,²⁶ so drafting the trust instrument to avoid the default distribution back to the transferor (as shown in the language above) may be important.

2. Planning with the Remaining Assets

A planner dealing with company interests will likely want to fund a Purpose Trust with the controlling interests in an entity, but the question remains regarding what to do with the balance of the assets. For various reasons (value concerns, structure limitations, need for distributions to family, etc.), it may not be feasible to fund the Purpose Trust with the entire company. Uncertainty around the tax treatment of Purpose Trusts may also hinder the grantor's ability to move substantial assets to the trust. Planners should consider more traditional planning alternatives for the balance of the company such as irrevocable trusts for family members, gifts or bequests to public charities, and lifetime gifts to 501(c)(4)s (recall that, although tax-free gifts to 501(c)(4)s are allowed under [IRC § 2501\(a\)\(6\)](#), there is no equivalent federal estate tax exemption under [IRC § 2055\(a\)](#), so make all gifts to 501(c)(4)s during life). Private foundations may also be considered, but draconian rules regarding businesses held in private foundations often limit their usefulness in this context. Consider also that although the Purpose Trust has no identifiable beneficiaries to pressure the trustee for economic gain, if non-voting shares or other limited liability interests are held outside of the Purpose Trust, these owners may seek to use what rights they have to pressure the company directly to maximize profits or act in ways inconsistent with the Purpose Trust.

3. Governance Considerations

Beyond the more technical tax aspects of Purpose Trust planning, the "softer" side of the drafting is equally, if not more, crucial. Almost by definition, a Purpose Trust is destined to be used to lock in the grantor's intended purpose for the assets and their long-term use. In fact, the grantor almost assuredly desires that the identified purpose survive jurisprudence changes, world events, and the lifetimes of those individuals who are tasked with ensuring that the purpose is carried out. Therefore, establishing a forward-thinking, self-perpetuating management structure that will continue to uphold the purpose of the trust and the business it controls (if applicable) is critical. Further, clients and planners should balance the need to protect the client's purposes with the need for sufficient flexibility so that managers of the business can adapt to changes over time. Most of this can be done through the trust enforcer position(s) over the Purpose Trust. For example, the Texas statute is clear that a succession plan for trust enforcers can be built into the Purpose Trust,²⁷ and that a trust enforcer can be given authority to make certain fiduciary-like decisions and consents over the activities of the Purpose Trust.²⁸ Consider the hypothetical

²⁵ [TEX. PROP. CODE § 112.122](#).

²⁶ [Id. § 112.123\(b\)](#).

²⁷ [Id. § 112.122\(f\)](#).

²⁸ [Id. § 112.122\(c\), \(d\)](#).

where the Purpose Trust is funded with voting shares for Acme Company to be run to support the conservation of the roadrunner population. In that case, the grantor might want to have trust enforcers that represent both the company and the non-business group, as follows:

At all times the Trust shall have seven (7) “trust enforcers” for purposes of Section 112.122 of the Texas Trust Code (in such capacity, each an “Enforcer”), as follows: (i) four (4) Enforcers shall serve as “Acme Enforcers” and shall be appointed by the Board of Acme Company and (ii) three (3) Enforcers shall serve as “Conservation Enforcers” and shall be appointed by the Board of the Roadrunner Conservation Society. Each individual serving as an Enforcer must be designated as either an Acme Enforcer or a Conservation Enforcer.

It is equally important to set forth a purpose that is focused but flexible enough to adapt to changing times. Consider the following language, which attempts to impress upon the importance of the purpose without unduly tying the hands of the trustee or the trust enforcers with too much specificity:

The Trust shall be a noncharitable trust without an ascertainable beneficiary as provided in Chapter 112, Subchapter F, of the Texas Trust Code. The purpose of the Trust is to support the long-term success of Acme Company, a Texas corporation, or its successor (“Acme” or the “Company”), and the long-term success of the philanthropic legacy of Wile E. Coyote, advancing and supporting roadrunner and other wildlife conservation in the State of Texas, recognizing that the success of Acme is integral to the advancement of such philanthropic legacy.

Consider also whether to include a super-majority vote of trust enforcers to take or consent to certain fundamental actions, such as the sale or merger of the applicable company.

III. Conclusion

After two years of having a Texas Purpose Trust statute, these trusts are still likely discussed far more than implemented. Although business owners who seek to benefit progressive causes will grab more headlines, the expectation is that Purpose Trusts in Texas will be mostly used to lock in long-term ownership of companies and family governance structures. Perhaps if this Article is revisited a few years hence, more jurisprudence and successful examples of the use of Purpose Trusts (beyond the arguably overused example of Patagonia) will be available so that practitioners will feel comfortable seeing them as a traditional planning technique.